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ABSTRACT

These classroom materials are part of the Project Benchmark series designed to teach secondary students about our legal concepts and systems. This unit focuses on the procedures and cases of the small claims court. The materials outline the kinds of cases, procedures of the plaintiff and defendent, trial procedures, rights of appeal, writ of execution, and alternatives to the present small claim court system. Suggestions for a sample lesson using the materials are also included. This lesson requires students to hold a mock small claims court session in the classroom with students playing the roles of the judge, court clerk, plaintiffs, defendants, and witnesses. (DE)

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SMALL CLAIMS COURT

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Small Claims Court

IN ENGLAND, THE APRIL DAWN CAME EARLY, COLD, AND FOGGY. A small cluster of men stood stiffly in the forest clearing. Two of the men were back to back, pistols raised. At a word from one of the others, they started stepping off. " . . . Eight, nine, ten!"

Both men pivoted quickly and leveled their pistols. Two sharp cracks echoed through the wet, silent forest.

One man dropped to his knees, then pitched forward. The physician went to his side--"He's dead."

The affair was over, the dispute settled. One gentleman farmer, neighbor to the other, had paid with his life for a two pound, five shilling disagreement over the rental of a plow.

It was illegal, though not uncommon, for gentlemen to settle their quarrels by duel or shoot-out in both Europe and America. Unfortunately the victor may not necessarily have been in the right. But a .50 caliber ball from a single-shot pistol did settle the argument--quickly and permanently.

Today people solve many of their disagreements in court. The method may be slower, but it's more satisfactory. Some people hire an attorney to present their case before a jury of fellow citizens who decide the dispute after a proper trial. Other people--if their dispute involves a small amount of money, $500 or less--choose to represent themselves and tell their story to the judge in a small claims court.

Do-It-Yourself Lawsuits

THE SMALL CLAIMS COURT PROVIDES AN INEXPENSIVE AND INFORMAL WAY for individuals, businesses, corporations and governmental agencies to settle disagreements. The first such court was London's Small Debt Court. It was started in 1605. Small claims courts appeared in the United States in the early 1900's--in Ohio in 1913, in Massachusetts in 1920, in California in 1921. Today over half of all the civil claims filed in California each year are small claims.

Briefly, this is how the small claims court operates:

You can sue for money only. You can't ask the court to issue a "writ"--an order to force someone to do or not to do something. For example, the small claims court judge can't order your neighbor to top a tall tree that's blocking your ocean view. But he may order your neighbor to pay you the $150 he promised toward repairing the fence separating your yards. The one exception to this rule involves landlord-tenant cases. In certain instances--described in detail later--the small claims court may order a tenant to pay his back rent and also to move out of his apartment. This is called an unlawful detainer action.

Claims can be lowered. Say your auto body shop repairs Hal's sports car. You charge him $550 for the work, but he never pays you. How can you file a claim for $550 in small claims court, which has a $500 limit? You have two alternatives: You can take Hal to a justice or municipal court if you want, but you may end up hiring an attorney who will charge a couple of hundred dollars to represent you. Or you can reduce your claim to $500 and represent yourself in small claims court. This way you won't have to pay an attorney, so whatever amount the judge awards you is yours.

Claims can be consolidated, not split. You are a dentist and Alyce Pierson owes you $30 for x-rays and teeth cleaning, $15 for a cavity you filled last year, and $25 for one you filled last month. You can add up all these smaller claims and sue Alyce for $70 in small claims court. But if instead Alyce owes you $650 for a bridge you made her, you can't sue her once for $500 and once for $150. If you sue her for $500 in small claims court, you must forget the remaining $150 forever. The alternative is to hire an attorney and sue for the full amount in your county's justice or municipal court.

Procedure is informal. Attorneys are not allowed to represent people in small claims court. But they may appear if they are parties--the plaintiff or defendant--in a small claims case. If you sue or are sued by someone, you must speak for yourself. There are no juries. You present your case to the judge and he makes the decision. In addition, there's no formal questioning and cross-examination. Usually the judge asks you to tell your side of the dispute in your own words. He may ask you questions to be sure he understands your case. Formal rules of evidence are not used. The judge can listen to any witness you bring with you. If he wants, he can listen to hearsay testimony--statements someone makes to the witness about something the witness himself didn't hear or see. The judge can also examine any document you supply--including copies of documents, rather than the originals. It's up to him.

KINDS OF CASES

ALTHOUGH THE SMALL CLAIMS COURT IS LIMITED to disputes involving money, it handles many kinds of cases. These are examples of the six most common disputes which find their way into the "people's court."

Automobile Accidents -- Often disputes between individuals involve

auto accidents. Jack Thomas rear-ends your car as you sit at the corner waiting for the light to change. Unfortunately Jack doesn't have insurance to pay for the necessary repairs to your car. Or for the stitches to sew up the cuts on your forehead. Or for your broken eyeglasses. Or for the time you missed from work because you couldn't see to do your job. Or for the taxis you had to take while your car was being repaired. You can sue Jack Thomas for any of these claims in small claims court.

Of course, you'll have to prove your case. You bring in witnesses who saw the accident. For example, your wife who was riding with you at the time might testify for you. Or a stranger who saw Jack bang into your car. The stranger's testimony will probably carry more weight with the judge than your wife's, since he won't have a stake in the outcome of the case. If the stranger won't come to court voluntarily, the court clerk will show you how to prepare a subpoena to force him to come. It's also smart to bring photos to show the judge how your car looked after the accident. And how you looked after the accident. You should also bring in your broken glasses. Bring estimates of how much it will cost to repair your car and glasses and any other property damaged in the accident. Also bring receipts for repairs already made and copies of any medical bills.

Sale of Goods -- Many small claims cases involve the sale of goods. The merchant who is still waiting for payment of the suit or stereo he sold you may sue you in small claims court. On the other hand, perhaps you have the complaint. You bought an electric blender; when you took it home it sprayed food all over the kitchen. You return it to the store. If the merchant says you broke the blender yourself and won't refund your money, you can take him to small claims court.

Suppose a merchant sues for an unpaid bill. He'll bring his records with him to prove to the judge that you still owe him $80 for a brown, two-button Supercrease suit. If you go to court as a consumer, be sure to bring along a sales slip showing how much you paid for the item in question, a copy of the guarantee, and possibly the item itself. It's also helpful to have a witness who can testify you didn't abuse or break the product.

Sales of Services -- By far the majority of small claims cases involve disputes over the sale of services. These suits are generally filed by governmental agencies and corporations. For example, a governmental agency--like the county hospital--may sue a patient who doesn't pay his bill. Or the county roads department may sue a driver who runs down a stop sign or light standard and refuses to pay for it.

Businesses and corporations often sue in small claims court for ser-

vices they provided and for which they didn't get paid. For example, you and your partners run Neat and Tidy, Inc., a yard-cleaning business. You spend a week digging out Mr. Watson's back lot, which is filled with weeds and beer cans. If Mr. Watson refuses to pay you for your work, you can take him to small claims court.

On the other hand, if Mr. Watson pays you in advance to remove the weeds and cans from his lot and you do only half the job, he can take you to small claims court for services not properly performed.

You'll both want to bring any written agreements you signed, canceled checks, and maybe even a "before" and "after" photograph of the yard.

Contracts -- A contract is an oral or written agreement between two parties. Individuals, businesses, corporations, and governmental agencies all make contracts. And when one party doesn't live up to its promises, the other party may go to small claims court.

Contract disputes generally happen when: (1) one party promises to do something for the other party, and then doesn't do it, or doesn't do it properly; or (2) the party receiving the goods or services doesn't pay for them.

An example: Steven Boyd signs a written contract with Sanitee Septic Tank Service to clean out his septic tank twice a year for a set fee. Mr. Boyd pays the fee in advance. Sanitee cleans the tank once. Eighteen months later the company's men still haven't returned for the second cleaning. Mr. Boyd, his contract in hand, takes Sanitee to small claims court and asks for his money back.

Most important in any contract dispute is the document itself, if one exists. The judge will certainly want to read it and see just what each person promised. If the contract was oral, the judge will listen to what the parties promised each other verbally.

Loaned Money -- Loaned money disputes usually involve two people. Your old pal Dave Albany hits you up for $50. "I'll pay you back next month," he says. That's the last you see of Dave. After repeated requests for the money, you take your former friend to small claims court.

If Dave signed an IOU, bring it along. If he didn't, you might produce a witness who overheard Dave promise to pay back the money. Or your check for $50, with Dave's endorsement on it. Dave may be down and out, in which case you'll probably have trouble collecting the $50--even if the judge tells Dave to pay. If you can't collect, you can at least write off the loan on your federal income tax report as a "business loss."

On the other hand, perhaps you're sued for money borrowed; but you know you've already paid it back. In that case, be sure to have some proof with you. A canceled check is best; a friend who saw you pay back the money may also be helpful.

Back Rent -- Landlords often use small claims to collect back rent from slow-paying tenants. In an unlawful detainer action, a landlord can also--under certain circumstances--get the tenant moved out. This means if you have a month-to-month lease on an apartment or house and you haven't paid the rent that's due, the landlord may serve you with a three-day notice asking you to pay up and get out. If you don't, the court may order you to do so.

What if you withheld rent because your apartment was in poor condition? Perhaps your bathroom ceiling was falling in and your radiator didn't work. Or your plumbing constantly backed up and cockroaches lived under your bed. In such a case, you won't necessarily be forced to pay up and move out. The law says your landlord is responsible for keeping your apartment in satisfactory condition. If he doesn't, the court may deny his unlawful detainer claim.

Perhaps the problem with your apartment isn't so serious. Your kitchen window is broken and you ask the landlord to fix it. He doesn't, and after a reasonable time you pay to have it fixed yourself. The cost is $58, so you subtract that amount from your month's rent. Can your landlord sue you in small claims court for the $58? The law says a tenant is allowed to withhold up to one month's rent once a year to pay for necessary repairs to an apartment or house--unless he gave up that right when he signed his lease or rental agreement.

On the other hand, tenants frequently use the small claims court to sue their landlords over cleaning and security deposits. In such cases, the tenant asks for the return of his deposit, which he claims the landlord wrongfully refused to refund.

In any landlord-tenant dispute, the landlord will bring to court the rental agreement and a copy of your payment record. If you question the amount owed, bring your canceled checks. Also bring receipts for materials and labor if you claim to have made necessary repairs on the property. "Before" and "after" photographs of the premises are helpful, too.

SMALL CLAIMS COURT -- PROCEDURES

THE PARTIES INVOLVED IN A SMALL CLAIMS COURT LAWSUIT are the plaintiff and the defendant. The plaintiff is the one who is suing; the defendant is the one being sued. Any person, business, corporation, or governmental agency may sue any other person, business, corporation, or governmental agency--as long as the amount asked for is under $500.

THE PLAINTIFF

WHO CAN SUE

IF YOU WANT TO FILE A SUIT IN SMALL CLAIMS COURT, you must be at least 18 years old and mentally competent. A person under 18 may file suit through an adult *guardian ad litem* appointed by the court. This guardian is usually the minor's parent, but may be a relative, friend, or any other person. The guardianship ends after the lawsuit.

When a business or corporation is the plaintiff in small claims court, it must be represented by an officer or employee familiar with the facts of the case.

Unlike suits filed in other courts, no one can file a small claims suit for someone else. This means that if your brother's car is damaged in an auto accident, you can't sue the driver of the other car for him--even though your brother has gone to Europe and asked you to take care of the matter. Only your brother can file suit, and only he can go to court in his own behalf. You cannot speak for him during the trial, unless you saw the accident and can testify as a witness. Nor can your brother hire a lawyer to represent him. He must speak for himself.

WHO CAN BE SUED

ANY PERSON CAN BE SUED IN SMALL CLAIMS COURT. This includes a minor--someone who is under 18. Although the law is somewhat complex, a minor will usually be held personally responsible if he injures you or damages your property. Suppose your 12-year-old neighbor accidentally hits a baseball through your living room window. If you sue him in small claims court for repairs, the court will probably order him to pay the damages. Sometimes a minor's parents may also be held responsible for their child's acts and forced to pay damages.

WHERE TO SUE

WHERE SHOULD YOU FILE THE LAWSUIT? Every county is divided into geographical areas, called judicial districts. And each judicial district contains either a justice or municipal court, depending on the population of the district. Those districts with fewer than 40,000 residents have justice courts, while those with more than 40,000 have municipal courts.

Justice and municipal courts set aside certain days and times to hear small claims cases. Generally, no matter what kind of case is involved, you may file suit in the judicial district in which the defendant lives. Or in which the corporation is located.

Sample Form

SMALL CLAIMS COURT OF CALIFORNIA

PLAINTIFF'S STATEMENT: ACTION NO. SC_____

1. MY NAME (plaintiff)_____

_____

2. MY ADDRESS_____

3. MY TELEPHONE NUMBER_____

4. AMOUNT OF CLAIM_____

5. NATURE OF CLAIM_____

_____

6. DATE AND PLACE WHERE DAMAGES OCCURRED, OR WHERE OBLIGATION WAS TO BE PERFORMED:

_____

7. MY CLAIM IS AGAINST (defendant):
Note: (a) If you are suing an individual, give his full name. (b) If you are suing a business firm, give the firm name and the name of owner or owners. (c) If you are suing a corporation, give its full name. If your suit arises out of an automobile accident, you must have been the registered owner of the vehicle on the date of the accident. You must name the driver, and should also name the registered owner as a defendant.

NAME AND ADDRESS_____

_____

_____

_____

ORDER TO PLAINTIFF TO APPEAR:

Your case will be tried at_____ on_____ in the courtroom, Dept. No._____, 600 "A" Street, River City, California. YOU ARE HEREBY DIRECTED to appear on said date and to bring with you all books, papers and witnesses needed to prove your claim.

SOLOMON M. MASTERS, Clerk

DECLARATION OF NON-MILITARY SERVICE:

I, the undersigned, say: That the above named defendant(s) and each of them, if more than one is named herein, is not now a person in the military service of the United States as defined in Section 101 and subdivisions thereof, of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, and is not entitled to the benefits of said Act as amended.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____ at River City, California.

_____
Signature of Declarant

REQUEST FOR DISMISSAL:

If case is paid or settled before trial, sign below and mail this form to Small Claims Court, 600 "A" Street, River City, California.
IT IS REQUESTED THAT THE ABOVE ENTITLED ACTION BE DISMISSED.

DATED _____

_____
Signature of Plaintiff

If your case involves a breach of contract, however, you may file suit in the district where the contract was to be performed--even though the defendant lives somewhere else. Suppose Mrs. Potter agrees to pay you $450 for painting an apartment building she owns. If she refuses to pay you after the job is finished, you can sue her in the district in which she lives. Or in the district in which the apartment building is located.

A suit may also be filed in the district in which you or your property were injured. Perhaps Walter Stock smashes into the back of your car as you wait for a red light. You can sue Mr. Stock for damages in the district where he lives. Or in the district where the accident occurred.

CLAIM OF PLAINTIFF AND ORDER

TO FILE A SUIT, YOU MUST GO TO THE SMALL CLAIMS OFFICE in the courthouse and fill out a "Claim of Plaintiff and Order" form. You must submit this form and take an oath that what it says is true. The "Claim of Plaintiff" portion states who is involved in the lawsuit, what the claim is about, how much money you're asking for, and where the defendant lives. The "Order" gives the date, time, and place of the upcoming trial.

In setting a trial date, the clerk must obey California law. The law says that a trial must be held at least ten days, but not more than thirty days, from the date of filing--if the defendant lives in the county where the suit is filed. If he lives outside the county, the trial date must be not less than thirty nor more than sixty days from the date of filing.

You must pay a fee of $2 for filing the "Claim of Plaintiff and Order" form. However if you win your case, you'll get this money back as a court cost.

SERVICE

NOW THAT YOU'VE FILLED OUT THE "CLAIM OF PLAINTIFF AND ORDER," it must be served on the defendant. This means that he must be given a copy of the form, so he'll know he's being sued and must appear in court. The notice allows him time to prepare his defense.

The defendant must be served in a certain manner and within a certain period of time. Otherwise the court won't have power to hear the case.

SERVICE BY MAIL

ONE METHOD OF SERVICE IS SERVICE BY MAIL. The court clerk will send the defendant a copy of the "Claim of Plaintiff and Order" by certified or

registered mail. Only the court clerk can do this, and you must pay a fee of $1.50.

This form of service is legally effective if the defendant receives the notice and signs for it. The post office receipt, with the defendant's signature on it, is proof of service.

The trouble with this method is that the defendant may choose not to accept any registered mail. Suppose Art Johnson repaves your driveway. And in the process buries your border of petunias in cement. You ask Art to pay for damages to your flower bed and threaten to take further action if he doesn't. If Art suspects you might sue him in small claims court, he might refuse any registered letters. Without proof of service, the judge won't be able to hear your case. You should remember, too, that you won't know whether or not Art refused the notice until you appear in court. Then you may learn--to your dismay--that the trial can't proceed because the defendant wasn't served properly.

PERSONAL SERVICE

THE SECOND METHOD OF SERVICE IS CALLED PERSONAL SERVICE. This means that someone actually hands the defendant a copy of the "Claim of Plaintiff and Order." You, the plaintiff, can't give him the form. But anyone else can--a sheriff, marshal, professional process-server, or even one of your friends.

If you want a sheriff or a professional process-server to deliver the "Claim of Plaintiff and Order," you give him a copy of the form and pay a fee. You'll receive this money back as a court cost if you win your case, as long as the fee is reasonable. If you want a friend or relative to serve the order, there are three requirements: the person must be at least 18 years old, a United States citizen, and not involved in the case.

This method of service is good once the defendant receives a copy of the form personally. For example, suppose you pay a server the proper fee and ask him to deliver the notice to Art Johnson. The server must hand the paper to Art himself. He can't give it to Art's wife or leave it under his door. The server can give the form to Art at work or at home, as long as he receives the paper personally.

Once the person serving the notice has given it to the defendant, the sheriff or process-server must fill out a "Proof of Service" form that the court clerk will provide. This says the defendant was given a copy of the "Claim of

Plaintiff and Order." It is the proof required by law that the defendant has notice of the lawsuit against him.

WHERE AND WHEN SERVICE IS GOOD

YOU CAN SERVE THE DEFENDANT WHEN HE'S OUTSIDE THE COUNTY where the suit was filed. But you can't serve him when he's outside of California. One exception: when a person from another state is involved in an auto accident in California, the defendant can be served in his home state.

Finally, the defendant must receive notice of the lawsuit within a certain period of time. If he lives in the same county as the one in which you filed suit, this means at least five days before the trial. If he lives outside the county, it means at least fifteen days before the trial. What happens if you aren't able to serve the defendant within the required time period? You must then ask the court clerk to reset the trial date, and you must try once more to serve the defendant properly.

THE DEFENDANT

LET'S IMAGINE NOW THAT YOU'RE THE DEFENDANT in a small claims court suit. What should you do, once you receive notice of the trial?

SETTLEMENT

YOU CAN TRY TO SETTLE THE DISPUTE RIGHT AWAY, before the case goes to court. You might believe the plaintiff's claim against you is valid. Or even if you feel it isn't, you may not think the time and effort involved in fighting the claim is worthwhile. In either case, you would get together with the plaintiff and agree on how much you will pay him.

If you settle out of court, be sure the plaintiff fills out a "Request for Dismissal" form that the court clerk will give him. This form shows that the case was settled. It will keep the plaintiff from ever suing you again on the same claim.

DEFAULT

IF YOU'RE SUED, YOUR SECOND ALTERNATIVE IS TO DO NOTHING. For example, Sandra Lillie took her VW to Ed's Garage for a minor repair. Ed billed her $50. After the engine stalled at several corners, Sandra decided Ed had done a poor job on her car. She didn't take it back to complain about the work, but she never paid her $50 bill either--even when Ed personally asked her for the money.

Several weeks passed. Then a process-server notified Sandra that Ed had filed suit against her in small claims court. By the day of the trial, Sandra was nervous. She couldn't prove Ed had done a poor repair job. So she simply didn't appear in court.

When a defendant doesn't show up, the plaintiff often wins by default. This means that the plaintiff presents his case to the judge, even though the defendant isn't there. If the judge finds the defendant received proper notice of the trial, he will frequently award the plaintiff all or part of the money he wants. In our example, the judge would probably allow Ed Brentano $50, plus the cost of filing his claim and serving notice on Sandra Lillie.

However, the court must have a current "Declaration of Non-military Status" on file before it can enter a default judgment. This form shows that the defendant isn't in the military at the time of the trial and thus unable to be present.

The court clerk will provide the "Declaration of Non-military Status" form. The plaintiff must sign the form at the hearing and give it to the clerk.

But suppose Sandra Lillie, or any defendant, has a good reason why he or she didn't attend the trial. Let's imagine that because of a mistake, accident, or fraud--not a willful decision--Sandra missed her hearing and the judge entered a default judgment against her. Is there anything Sandra can do?

Yes, she can fill out and file with the court a form explaining why

she was absent. The clerk will then set a date for a new hearing before the judge, and notify the plaintiff.

At the hearing Sandra must explain why she couldn't get to the trial. The judge will decide whether or not Sandra's reasons for not appearing were good. And if the judge decides they were, he will set aside his previous order and arrange for a new hearing. Of course, the plaintiff may oppose the defendant's request for a new trial, and the judge will consider this argument.

DEFENSE

A DEFENDANT'S THIRD ALTERNATIVE IN A SMALL CLAIMS LAWSUIT is to appear in court and present his side of the story. As a defendant, you may disagree with the plaintiff's claim, or the amount of money he wants. You may even have a claim of your own against him.

Tom Watson was driving slowly through a residential part of town in his new yellow compact sedan. He saw a red station wagon approaching the intersection at his right. He knew there was a stop sign for the other vehicle and that he had the right of way. He continued in the same direction until he was almost at the intersection. Then he saw that the other driver was not going to stop. Tom braked, but not soon enough to prevent the accident. He ploughed broadside into the station wagon.

Tom's front end repairs were over $350. He asked Mel George, the driver of the other car, for the money. Mel refused to pay, saying it wasn't his fault. So Tom filed a small claims court suit.

Tom had Mel served with notice of the claim against him. Mel filed a "Claim of Defendant" in response to Tom's action. In his counterclaim, Mel said the accident was Tom's fault, not his. And he asked that Tom pay the $320 it cost to repair his station wagon.

COUNTERCLAIM

A "CLAIM OF DEFENDANT" MUST BE A RESPONSE to the claim the plaintiff files against the defendant. The counterclaim must arise from the same incident or transaction on which the plaintiff's lawsuit is based. In addition, the defendant's claim must be for less than $500.

When Mel filed his counterclaim, the court clerk gave him a form and helped him fill it out. There was no charge for filing. Then Mel arranged to serve the claim on Tom Watson. The law says the plaintiff must receive notice of a counterclaim at least forty-eight hours before the trial.

If the damages to Mel's car had been over $500, his "Claim of Defendant" couldn't have been heard in small claims court. The entire case would

have been transferred to a higher court, with jurisdiction or power to hear disputes involving more than $500. In a higher court the hearing would be more formal. Both Tom and Mel would be entitled to be represented by attorneys.

The Trial

THE SMALL CLAIMS COURT IS HANDLED INFORMALLY. There are rules, but they're not as detailed or complicated as those in higher courts. The judge encourages each participant to tell his story simply and briefly.

On the day of your hearing, make every effort to be on time. If for some unexpected reason--such as serious illness--you can't appear in court, call the clerk immediately. The clerk will notify the judge, and he may reschedule your case for a later date.

Remember that if the plaintiff doesn't appear in court for his hearing, the judge may dismiss the case. And if the defendant isn't there, the judge may award the money to the other side by default.

Procedures

SMALL CLAIMS COURT PROCEDURES VARY SLIGHTLY from courtroom to courtroom. For example, some court clerks swear in all the participants at the same time, as soon as court opens. Others give the oath on a case to case basis.

Very often the judge will take a few minutes at the beginning of a small claims session to explain what is going to happen. He will tell everyone how to present his case. He will say whether or not the plaintiff and defendant may ask each other questions directly. He will explain that he can listen to any witnesses present and see any documents offered; he isn't bound by formal rules for admitting evidence. And he will remind the participants that lawyers aren't permitted. The only time an attorney is allowed in small claims court is when he's a participant himself. Or when he's speaking for a corporation. But he must be an employee or officer who is personally familiar with the case; he can't speak for the corporation if he works there only as a lawyer.

If you're the plaintiff, you'll tell your side of the story first. You'll explain why you think the defendant owes you money. You can bring witnesses to back up your statements; the judge will question them under oath. You can also bring letters, contracts, receipts, or other documents to help prove your case. In fact the more evidence you have with you, the better.

If you're the defendant, you'll present your case after the plaintiff has finished. You also have the right to bring witnesses and documents to support your story.

The judge will listen to both sides. Plainly neither party would be in court if there were no dispute. So the judge must first decide what the true facts of the case are. Then he must apply the law to those facts. Finally he must decide who wins according to the facts and the law.

Sometimes the judge will announce his decision right away. More frequently, however, he will notify the parties later by mail. He may want to think more about the case. And sometimes when the judge announces his decision on the spot, the disgruntled loser takes a poke at the winner--either verbally or physically. So many judges feel it's best to mail the decision to the participants a few days later--after they've had a chance to cool off.

WATSON V. GEORGE

LET'S LOOK IN MORE DETAIL AT A CASE we mentioned earlier. *Watson versus George* involves a dispute over damages resulting from an automobile accident.

JUDGE: Mr. Watson, you're the person bringing this action. Will you tell us exactly what happened? Please be brief, and if there's anything I need clarified, I'll interrupt and ask you about it.

TOM WATSON: Yes, your honor. Well, on June 14 I was driving along Arcadia Street, near Shady Lane. I was going about 15 miles an hour. I noticed this red station wagon approaching from the right. I know there's a stop sign at Shady Lane and everyone is supposed to stop there before coming into Arcadia . . .

MEL GEORGE: That's not the way it was, your honor . . .

JUDGE: Wait just a minute. I don't want any interruptions. You'll have a chance to tell your story later and then we won't let Mr. Watson interrupt you. All right?

MEL: Yes, sir.

JUDGE: Now, Mr. Watson, a question. How far were you from the intersection of Arcadia and Shady Lane when you first saw this man in his station wagon?

TOM: About a hundred and fifty feet. He was a little closer to the intersection than I was--maybe seventy-five feet. I thought he'd do what anybody else would do, and stop. So I didn't keep my eyes on him constantly. The next thing I knew, I was at the Shady Lane intersection, and he was in front of

me. I jammed on my brakes, but I couldn't help skidding into him. My front end was damaged and it cost me--

JUDGE: We'll get to that in a moment. Now, Mr. George, Mr. Watson says he saw you when he was a hundred and fifty feet from the corner. Did you see him at any time before you reached the corner yourself?

MEL: Yes, I saw him. But I don't know how far away he was. I can't judge distance by feet very well.

JUDGE: Well, would you say he was seven or eight car lengths from the corner?

MEL: Yes, I guess so. I slowed down for the corner and I saw him slowing down, too--so I naturally assumed he was giving me the right of way, and I went ahead. And then he hit me.

JUDGE: Did you stop at the stop sign?

MEL: I was practically stopped when I saw him slow down. If he didn't mean to [illegible] me by, it was negligent driving on his part. That's why I'm filing a counterclaim. Besides, he admitted he wasn't watching me the whole time. And my roommate--who was with me in the car--will tell you the same thing. He saw it all.

JUDGE: The law requires that a driver approaching a stop sign must come to a full stop and wait until it is safe to proceed. Now if you didn't stop, you violated a traffic law. And if you did stop--it seems to me that being able to see Mr. Watson approaching--you started out again before it was safe for you to do so. And that's a violation, too.

MEL: But your honor, he misled me by his actions. He slowed down a bit and then he must have speeded up. And he admits he saw me.

JUDGE: The law says everyone has a right to believe that every other person around him will act in a lawful manner. Even if Mr. Watson's speed was slightly irregular, I think he had a right to rely on your stopping as required. I don't think he was guilty of contributory negligence under these circumstances. I'm going to have to deny your counterclaim, Mr. George.

TOM: Your honor, what about the damages to my car? Does Mr. George have to pay me?

JUDGE: Yes, Mr. George will have to pay for the repairs to your car and for your court costs. Did you bring the damage repair estimates with you?

TOM: Yes, I've got them here. I had three estimates made and I've brought them all with me. Since I use my car to drive back and forth to work, I had to have it repaired right away. I had it done by the garage that gave me the lowest estimate. I've brought my copy of the repair bill; it came to $351.27.

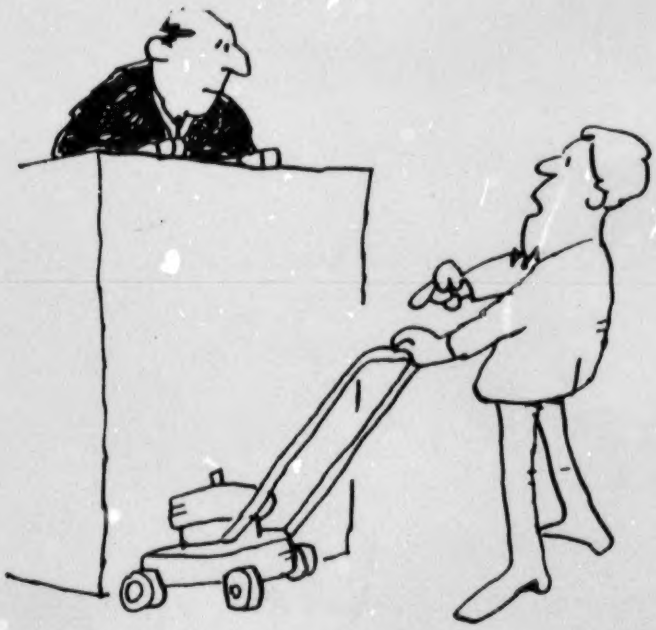
JUDGE: (After looking over the documents) All right, I award Tom Watson $351.27 for damages to his car plus $16 to cover the costs of filing his claim and having the papers served on Mr. George.

Right To Appeal

SUPPOSE THE TRIAL ENDS AND YOU--THE PLAINTIFF--LOSE. The judge decided against you. Or perhaps you asked for $400 and he awarded you only $150. Is there anything you can do?

No! When you filed your "Claim of Plaintiff and Order," you stated on the form that you understood you were giving up your right to appeal. You could have chosen a hearing in the municipal or justice court instead. In that case, it would have cost you more. But you could have had a lawyer and a more formal hearing--plus you would have had the right to appeal.

There is one exception to this rule. If the defendant files a counter-claim, and the judge rules in his favor, you can appeal the decision. The defendant is then bringing an action against you, and you have the right to appeal if you lose.



The defendant in small claims court *always* has the right to appeal. Let's look at an example. Russell Duncan bought a power lawnmower from Arnold's Department Store. When the lawnmower was delivered one Saturday morning, Russell took it for a few laps around his house to test it out. The engine kept sputtering and dying.

Russell examined the machine and found that it seemed to be used--not the brand new model the salesman had showed him. So Russell refused to pay. He soon found himself in court, however, because the department store demanded payment for the lawnmower. Russell had no way of proving that the machine was used. So the judge ruled in the store's favor.

Since Russell Duncan was the defendant, he had the right of appeal. The small claims court doesn't have the power to hear appeals. They are heard in superior court. So Russell filed his appeal in the superior court of the county in which the small claims court was located.

Appeal Hearing

THE FIRST THING RUSSELL HAD TO DO was get a "Notice of Appeal" form. This simply states that the defendant wants to appeal the judge's decision; the defendant has twenty days after a judgment against him is entered to file. In addition, Russell had to pay a superior court filing fee.

Once Russell filed his "Notice of Appeal" the clerk of the small claims court notified Arnold's. Later the superior court clerk sent notices of the trial date to both Russell and the store.

The hearing in superior court is a *trial de novo*--an entirely new trial. The judge won't know anything about the case, except that the defendant lost in small claims court.

A superior court trial follows formal rules of evidence and procedure. So Russell was entitled to a lawyer to help him. Of course, Arnold's could hire an attorney, too. The lawyers question witnesses and present evidence during the trial.

Suppose Russell finally lost his appeal? He would then have to pay the store the money the court decided he owed, plus Arnold's costs. But if he won, the earlier judgment against him would be dropped.

Collection

WE'VE SAID THAT THE DEFENDANT ALWAYS HAS THE RIGHT TO APPEAL. But suppose he loses in a higher court. Or suppose he loses in small claims court and doesn't appeal. In either case, the plaintiff is legally entitled to the money the court orders the defendant to pay.

How does the plaintiff collect? Collection of a small claims court judgment can be difficult; it can also be an interesting challenge. Even though the court rules that the plaintiff is entitled to his money, the judge can't pound the defendant over the head until he pays. But there are legal methods to help the plaintiff collect.

Let's say the judge has ordered Barney Thorpe to pay his landlord $300 in back rent. Barney might pay Mr. Wilder right away. Or in installments, if he's short on cash. In either case the landlord is entitled to the rent, plus court costs.

WRIT OF EXECUTION

LET'S IMAGINE THAT BARNEY SIMPLY REFUSES TO PAY. His landlord is still entitled to his money. So he gets a Writ of Execution to help him collect.

A writ of execution is a court order directing a sheriff or marshal to seize property or assets from the defendant. The sheriff or marshal sells the property and pays the plaintiff from the proceeds of the sale. Or he turns over the asset--such as wages or money from a bank account--to the plaintiff.

The small claims court clerk will give Mr. Wilder a writ to fill out. The landlord must include with it a sheet stating exactly what property he wants seized. For example, if he plans to seize Barney's car, it's not enough to list it as a "1967 blue Ford Mustang." He must give the car's license number and registration number as well. Then Barney's landlord must pay the clerk a filing fee, and the sheriff or marshal a fee for serving the writ and collecting the property. And sometimes it's necessary to put up a deposit to cover the cost to the sheriff or marshal of seizing the property. For example, to guarantee that Mr. Wilder will pay for towing and storage of the seized car.

While the law gives Mr. Wilder--like any creditor--certain collection powers--it also provides safeguards so that Barney and other defendants won't lose everything. Some of Barney's property can't be seized, according to California law. That means Mr. Wilder can't take it, no matter what. For example, the landlord can't take more than 25 percent of Barney's unpaid weekly earnings for up to thirty days before a writ is served. And his entire salary may be exempt if Barney's wages are very low.

Other property may be declared exempt or safe if Barney takes steps to protect it. He can get exemptions for necessary household furnishings, tools of his trade or profession, unemployment benefits, and pensions.

However if the property the landlord lists on his writ is not exempt, the sheriff may take and sell it. Barney's car, for example. Or the landlord may claim and be given money from Barney's bank account.

A writ of execution is good for sixty or ninety days from the date the plaintiff gives it to the sheriff. The length of time a writ is good depends on what property or assets are to be seized. Writs asking that a person's wages be taken are good for ninety days; all other writs expire after sixty days. If Mr. Wilder doesn't receive all the money owed him by the time the writ expires, he can get a new one. This writ will also be good for sixty or ninety days. Mr. Wilder can keep on getting writs for ten years if Barney still owes him money.

Abstract of Judgment

ANOTHER MEANS OF COLLECTION IS AN "ABSTRACT OF JUDGMENT." This is a document showing that one person has won a money judgment against another. An "Abstract of Judgment" is useful in this way. Suppose Mr. Wilder records an "Abstract" with the county recorder. Then whenever Barney buys or sells real estate, he must pay his landlord the money he owes him before anyone can get full title to the property. An "Abstract" on file practically guarantees Mr. Wilder his money if Barney ever buys or sells a house or other real estate.

Supplemental Proceedings

SUPPOSE MR. WILDER WANTS TO COLLECT HIS MONEY but doesn't know what property Barney owns or how much money he has. Then he can't tell the sheriff what to seize.

In that case, Mr. Wilder can use supplemental proceedings. He can have Barney ordered into court to answer questions under oath about his property and finances. For example, Mr. Wilder can ask Barney what his salary is, where he works, and when he gets paid. He can ask whether or not Barney owns a car or a home. He can ask Barney about the balance in his checking or savings account. He can ask questions about insurance policies, stocks, bonds, or other valuable personal property. In fact, Mr. Wilder can ask almost any question relating to Barney's assets he wants. And Barney must answer truthfully or be guilty of perjury.

The plaintiff requests supplemental proceedings by filling out a form. This form asks the court to order the defendant to appear at a certain time to answer questions. The municipal court clerk will set a date for the hearing. The plaintiff must make sure that the defendant is served with notice of the hearing.

Since supplemental proceedings are held in municipal court, both Mr. Wilder and Barney may have attorneys represent them.

What if Barney doesn't show up for his hearing? The court may order him to show cause why he shouldn't be arrested. If he doesn't respond, the court can issue a bench warrant for his arrest. Then an officer would force Barney into court to answer questions.

Satisfaction of Judgment

LET'S IMAGINE THE JUDGMENT IS AT LONG LAST PAID. Barney Thorpe will certainly want his court record cleared. In order to prove he's paid his judgment in full, Barney should file a "Satisfaction of Judgment" form.

Barney must write Mr. Wilder a letter, asking him to sign the form. The landlord must do so within fifteen days after he receives Barney's request. The request must be written; otherwise it isn't valid. But if he follows the procedure properly, Barney can file the form with the clerk of the small claims court. And he'll have the court record to prove he's paid his judgment.

The court can fine the plaintiff if he refuses to sign a "Satisfaction of Judgment" form after he's been paid and after the defendant has made a proper request.

SMALL CLAIMS COURT TOMORROW

WE'VE DESCRIBED IN DETAIL HOW THE SMALL CLAIMS COURT OPERATES and the kinds of cases it handles. However, it's important to know that some court rules and procedures may change in the near future as we attempt to update and improve the small claims process.

Our system of justice is far from perfect. The Legislature--by passing, amending and repealing laws--and the courts--by interpreting and reinterpreting these laws--are continually trying to improve our system.

It's not surprising, then, that the small claims court might need some improvement. Its founders saw the court as an inexpensive and informal means of settling disputes involving small amounts of money. The legislators and judges who devised the system felt it would be used by John Q. Public--the average citizen--who sues his neighbor when the neighbor backs his car into John's fence and refuses to pay for the damages. Today's small claims court handles many individual disputes, but it also hears a vast number of cases which some people feel might best be handled another way.

DEBT COLLECTION CASES

THE SMALL CLAIMS COURT IS USED frequently by businesses, corporations and governmental agencies to collect debts from individuals. In fact, 70 percent of the small claims filed in California last year were filed by organizations. And over 80 percent of the parties who defended these suits were individuals. Moreover, in almost 90 percent of the small claims cases tried last year, the defendant lost and was told to pay up.

While it's true that many businesses have legitimate claims against overextended customers, it's also true that businessmen sometimes abuse the small claims court process. Let's look at an example. In a newspaper advertisement the Hugh Profitt Furniture Company offers a five-piece room group for $199. The unsuspecting customer goes to see this great buy but ends up buying a four-piece room group for $499. The $499 furniture is inferior merchandise and the sofa soon springs a leak. The customer goes back to the store to complain and Hugh Profitt says, "Sorry, buddy, but it's not my fault if your kids jumped up and down on the sofa until the stuffing came out."

The irate customer refuses to make his monthly payments on the furniture and later finds himself in small claims court. Hugh Profitt brings in his business records to prove that the customer isn't making his payments. When questioned by the judge, the nervous customer may admit that this is true. If the customer doesn't then explain that the sofa fell apart three months after it was delivered, the judgment will probably go to Hugh Profitt. Of course, the judge may see through Hugh Profitt's claim. In that case he'll see to it that the customer gets his furniture fixed or his money refunded.

Nonetheless, many concerned citizens feel that suits such as Hugh Profitt's should be handled by collection agencies and consumer action groups, rather than the small claims court. Some court reformers would like to ban all collection cases from the small claims court by limiting the kinds of cases it could hear. Others would prefer to ban *all* cases now filed by businesses, corporations, and governmental agencies. Some reformers favor instead the creation of neighborhood negotiation teams directed by consumer groups. They feel such panels would know enough about the company and customer in question to be able to decide fairly if the sofa was abused or just poorly constructed. On the other hand, opponents of such changes believe that if these claims weren't heard in small claims court, they might end up in a justice or municipal court at a much higher cost to the taxpayer.

The Professional Litigant

SINCE CORPORATIONS AND GOVERNMENTAL AGENCIES appear in small claims court more often than individuals, their representatives may gain the advantage of confidence and experience. The creditor who has a large and constant volume of claims uses the court on a weekly or monthly basis, often filing several claims at once. The representative of the corporation or governmental agency--even though not an attorney--knows the ropes in small claims court and has an advantage over the individual who appears only once. In fact, the officer who represents the corporation may have some legal training and certainly has access to the corporation's attorneys. On the other hand, the individual who goes to small claims court for the first time may be frightened and unfamiliar with legal language and procedures. The judge will do his best to help the individual present his case. But once the person is in court, it's too late to tell him what witnesses or documents he should have brought with him.

To help minimize a corporation's advantage, some court reformers would like to prohibit the filing of "group" claims and limit the number of times any one business or agency could appear in small claims court in a given time period. Other reformers feel that attorneys should be allowed to represent both the plaintiff and defendant in a small claims suit. But if lawyers were permitted, their opponents argue, the informal, inexpensive people's court would be replaced by an adversary system at great cost to litigants and taxpayers.

An alternative to the use of lawyers would be some form of paraprofessional representation for the uninformed or low-income litigant. Some people suggest a trained court employee who would meet with the litigant to explain how

the small claims court operates. This employee would help the litigant prepare his claim, telling him what witnesses and papers to bring to court. Still others propose the use of trained law school students as people's advocates. Attorneys might oppose these suggestions, however, since they have strict rules about "unauthorized practice of the law."

Collection Difficulties

ANOTHER CRITICISM OF THE SMALL CLAIMS COURT involves collection of the money the judge awards the winner. Many people think that once they win in small claims court, they will receive their money instantly. Unfortunately, this isn't true. It's up to the person who wins the judgment to collect it. The court will assist him with a writ of execution. But collecting a small claims court judgment may take time and effort on the winner's part. And some people don't have the time and know-how to collect. Besides, the person who owes you three months back rent may be unemployed and unable to pay anyway.

Every judge who sits in small claims court is aware of the problems we've mentioned, and he does his best to see that both sides receive a fair hearing and a fair decision. But if the judge doesn't agree with some aspects of the system, he can't change them on his own. Our lawmakers must do that--after careful consideration to make sure reforms are actually improvements. The Legislature and courts are currently reviewing the small claims structure to see how it can best be improved. Their goal is to offer the highest standard of justice possible to all of us using the court.

Sample Lesson

INTRODUCTION

Each teacher who reads this education unit on the SMALL CLAIMS COURT will probably consider these questions:

--How useful is this material to me and my students?

--How can I incorporate part or all of this material into a current or future study unit?

--How can I present this material to my students in an informative and interesting way?

Individual answers will vary according to the age, grade, and ability level of your students, and according to the courses you teach and the curriculum with which you must work.

The Sample Lesson included with this education unit is just one example of how you might choose to present this material on the SMALL CLAIMS COURT to your class. It's only a suggestion; feel free to modify this lesson or to substitute one of your own design.

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THE LESSON

A. CONCEPT: Small Claims Court

B. GRADE LEVEL: Secondary (8-12)

C. TIME NEEDED: 2-3 Class Periods

D. OBJECTIVES: To hold a mock small claims court session in your classroom with students roleplaying the judge, court clerk, plaintiffs, defendants and witnesses.

At the end of the mock court students will be able to:

--identify the kinds of cases that may be heard by the small claims court;

--define the roles played by the participants in the small claims court;

--list the procedures used by the small claims court in hearing its cases;

--explain how the small claims court judge makes a decision.

E. PROCEDURES:

1. BEFORE COURT BEGINS:

a. The teacher should read both the descriptive and sample lesson sections of the SMALL CLAIMS COURT education unit.

b. The class should read the descriptive section of the SMALL CLAIMS COURT booklet.

c. If at all possible, the teacher and class should attend a session of the local small claims court. Arrangements for observing small claims court may be made by phoning the court clerk's office. Sessions are usually held early in the morning and last for about an hour.

2. TO HOLD THE MOCK COURT:

a. The teacher assigns the roles to the students. Roles include 3 judges, 1 court clerk, 8 plaintiffs, 9 defendants, and as many witnesses as the plaintiffs and defendants need to tell their stories to the court.

b. The students who will roleplay the plaintiffs and defendants should meet in pairs to discuss the facts of their disputes. Each of their conversations should end with the plaintiff announcing that he or she is taking the case to small claims court.

c. Both the plaintiff and the defendant in each case should prepare facsimiles of documents they will use--i.e., repair estimates, warranties, receipts, payment records, rental agreements, or whatever papers might help them present their case to the court. The plaintiffs and defendants should also locate any witness whose testimony might help their case. Witnesses are permitted, unless the case situation specifically states none were present when the incident took place. The roleplayers may also bring any object or material evidence that will assist their case. Players may, with the teacher's permission, dress for their parts.

d. The teacher should discuss in detail with the three judges and court clerk their roles in the mock court. The judges should decide how the court will operate and should prepare an opening statement to let the plaintiffs and defendants know the rules of operation. The statement should explain what small claims court is all about; it should include decisions on whether or not questions should be addressed to the judge, whether or not the plaintiff and defendant may speak directly to each other, how the court's decision is to be made and announced, etc.

e. On the day of the actual mock court, set the classroom up as an informal courtroom. Place the teacher's desk in the front of the room for the judge. Seat the clerk at a desk in front of the judge, facing the participants and observers. Set up two tables for the plaintiffs and defendants; the tables should be side by side, facing the clerk's desk.

f. The court begins with the court clerk calling the cases and making certain that the plaintiffs and defendants are present and ready to proceed.

g. The judge explains how court will be conducted.

h. The clerk calls the first case and swears in the participants. The plaintiff tells his story to the court first, followed by the defendant.

i. After each case the three judges make an independent decision; each in turn announces this decision to the class, explaining his or her reasoning. The class may discuss the case, raising points for consideration or asking questions after the judges have announced their decisions. Three judges are used instead of one so that the class will understand that three individuals may look at the same documents and hear the same testimony and arrive at different conclusions. Judges may find for the plaintiff or the defendant, and they may decide that all or part of the money is due.

3. AFTER MOCK COURT:

The teacher should discuss small claims court with the class, summarizing with them the kinds of cases the court may hear, the roles played by the various participants, the procedures followed in court, and the process of decision-making used by the judge.

CASE ONE: *Harmer v. Bay Sports Arena & Rice*

This case involves damaged property valued at $125. The plaintiff is Donald Harmer, a college student who works part-time as a valet parker at the Bay Sports Arena. The defendants are Gordon Hibbdon, owner of the Bay Sports Arena, and George Rice, another college student and part-time valet car parker.

As valet parkers Donald and George drive cars from the arena entrance to an underground garage. They then ride back to the entrance in the back of an open pickup truck, driven by an arena employee. On the day in question Donald and George were both in the back of the truck. Donald was sitting on the side of the truck with his legs dangling toward the ground. George was standing in the truck bed with his hands braced against the back of the cab. When the driver went around a curve in the garage's up ramp, George lost his balance and fell sideways into Donald, knocking him off the side of the truck. The fall did not injure Donald in any way, but it did break his wrist watch.

Donald is suing both the arena owner and George--a good friend of his--for the cost of a new watch. Donald feels that the accident was in no way his fault. George doesn't believe it was his fault either; after all, it was the motion of the truck that threw him off balance. Mr. Hibbdon is certain the arena is not responsible because the truck driver was going at the usual speed--about 10 miles an hour--over a route he drove many times each working day.

CASE TWO: *Becker v. Nelson*

This case involves an unpaid $12 debt. The plaintiff is Edwin Becker, a 47-year-old auto parts salesman. The defendant is Bob Nelson, a 45-year-old construction worker and Ed's ex-best friend.

The incident in question took place in the parking lot of the football stadium just before the start of a Raider-Chief game. Ed bet Bob $12 that the Chiefs would win by at least 14 points. The final score was 24-7, but Bob refused to pay up. Ed has a witness who will testify that the bet was made in good faith and that the two friends shook on it.

Bob, on the other hand, claims the bet wasn't really a bet at all. He says he didn't shake hands with Ed and that he has a witness who agrees with him that he doesn't owe Ed a cent.

CASE THREE: *Lorenzo v. Carter Property Management Co.*

This case involves a dispute over the return of a $150 apartment damage deposit. The plaintiff is Jeanne Lorenzo, an interior designer who recently moved out of an apartment building owned by the Carter Property Management Co. The defendant is John H. Carter, who will represent his company in the lawsuit.

Ms. Lorenzo lived in the apartment for two years and paid her rent promptly on the first of each month. She kept her apartment immaculately clean, and her neighbors frequently complimented her on the "arty" way it was decorated. When Ms. Lorenzo moved out, she expected her landlord to return her full damage deposit.

The cleaning service Mr. Carter hired when Ms. Lorenzo moved found three large cigarette burns in the shag carpet beneath the sofa. It would have cost Mr. Carter much more than $150 to replace the carpet. So he kept the deposit to help pay for the damage Ms. Lorenzo supposedly did to the apartment.

Ms. Lorenzo is suing her former landlord for the return of her money because she is certain that the carpet was burned before she moved into the apartment. In fact, she remembers putting the sofa where she did so that it would cover the damaged carpet.

CASE FOUR: *Foreign Auto Service, Inc. v. McMillan*

This case involves non-payment of a $57 auto repair bill. The plaintiff is Foreign Auto Service, Inc., represented by head mechanic Jeff Laversin. The defendant is Maureen McMillan, a divorced mother with two small children. Mrs. McMillan regularly had her station wagon serviced by Foreign Auto Service, Inc.

Four months ago Jeff Laversin did a routine 45,000 mile service on Mrs. McMillan's station wagon. The parts and labor totaled $57. But Mrs. McMillan has not yet paid the bill.

Mrs. McMillan refuses to pay the repair bill because her car broke down three days after it was serviced. The family was out of town--the car had been driven about 500 miles since the service--when the clutch suddenly burned out. The car had to be towed 65 miles to the nearest garage for repairs. Mrs. McMillan believes that if Mr. Laversin had really checked the car over he would have known that the clutch was about to give out. She also believes he had a duty to advise her about the needed repair.

Mr. Laversin says he did check the clutch and it seemed fine the day the car was serviced. Mr. Laversin thinks Mrs. McMillan must have been riding the clutch on the mountain roads she was driving at the time the car broke down.

CASE FIVE: *Fong v. Sound Systems, Inc.*

This case involves a $399 dispute over a broken stereo receiver. The plaintiff is Brian Fong, a 19-year-old rock musician, who owns the broken receiver. The defendant is Sound Systems, Inc., the company that sold Brian the receiver. Sound Systems is regularly represented in small claims court by its repairs supervisor, Russ Jorgenson.

Brian bought his stereo receiver six months ago, along with a turntable and four speakers. The receiver, which is covered by a five-year warranty, has broken and has been repaired three times in the six months Brian has owned it. After the receiver breaks again, Russ refuses to fix it free of charge. He claims that the receiver has been abused and says that the warranty is therefore no longer valid. Brian is sure the receiver is a lemon, and he wants his money back.

Russ says he has worked on hundreds of receivers during his five years with Sound Systems, Inc. He's sure the receiver keeps breaking down because Brian is overloading its circuits. He also says the receiver shows evidence of having been dropped. Russ feels it's up to Brian to pay for any further repairs he wants made on the equipment.

CASE SIX: *Schoen v. Rodgers*

This case involves a $467 damage claim resulting from an automobile accident. The plaintiff is Andrew Schoen, a 73-year-old retired grocer. The defendant is Sharon Rodgers, a 33-year-old unemployed waitress.

On the evening in question, Mr. Schoen was driving home at 11 p.m. from a visit with his married daughter and her family. At the corner of Elm and Ash Streets Mr. Schoen stopped his car to wait for a signal light to turn green. According to Mr. Schoen, Miss Rodgers drove up behind him but failed to stop. He claims that she rear-ended his car, causing $467 in damages. Miss Rodgers doesn't have car insurance, so Mr. Schoen is suing her in small claims court.

Miss Rodgers' account of the accident is somewhat different from Mr. Schoen's. She claims that she drove up behind Mr. Schoen's car at the signal light but says that she stopped a full three feet behind his rear bumper. She says that when the light changed from red to green, Mr. Schoen must have accidently put his car into reverse because he backed up into her jeep. She says that no damage was done to her four-wheel drive jeep, but that the jeep's large front bumper did quite a bit of damage to Mr. Schoen's car. However, she believes she doesn't owe him a penny because the accident was in no way her fault.

No one witnessed the accident between Mr. Schoen and Miss Rodgers.

CASE SEVEN: *County Hospital v. Burkhardt*
County Hospital v. Hayes
County Hospital v. Thompson
County Hospital v. Zumwalt

These cases involve the defendants' failure to pay for County Hospital treatment. The representative for the County Hospital in all of the cases is its business manager, George Conner. The defendants are Lilac Burkhardt, who owes $212; Bertram Hayes, who owes $392; Robert Thompson, who owes $76; and Mildred Zumwalt, who owes $460.

Each of the cases will be called separately. In the first three instances, the defendants will not be present in court. However, the judge has proof that the defendants were properly served with a summons to appear. Therefore, Mr. Conner will ask the court for default judgments in these cases. He will be required to show the judge his proof that the defendants owe the amounts for which the hospital is asking. The fourth defendant, Mildred Zumwalt, is present in court, and she wishes to contest the amount of money the hospital claims she owes.

Mr. Conner's records show that Mildred Zumwalt received outpatient physical therapy for an injured leg muscle over a three week period. Her treatments included time in the whirlpool bath, massage and exercise with the physical therapist. The various sub-charges on her bill bring the total to $460, but Ms. Zumwalt has paid only $60. The County Hospital feels it is entitled to full payment for services.

Ms. Zumwalt, a dancing teacher who injured her leg doing a ballet demonstration for her class, says that $460 is too much for the treatment she received. According to Ms. Zumwalt's figures, she should have been billed $275 at most. She says she called the County Hospital Accounting Department four different times and got no answers to her questions. So she refused to pay more than the first $60 of her bill.

CASE EIGHT: *Sunrise Properties v. Mahon*

This case involves a motion to vacate a default judgment in an earlier case. The plaintiff is Lawrence Hobbs, representing Sunrise Properties. The defendant is Virgil Mahon, who lives in an apartment owned by Sunrise Properties.

In the earlier case Mr. Hobbs sued Mr. Mahon for $250 in back rent. Mr. Hobbs had the apartment manager, George Cohen, serve Mr. Mahon with a summons to appear in court. Mr. Mahon signed for the summons but failed to appear on the appointed day. The judge looked over the summons receipt and Mr. Hobbs's records showing that Mr. Mahon owed two months back rent. Then the judge ruled that Mr. Mahon did owe and must pay the $275.

Now Mr. Mahon is asking the court to set aside the judgment against him. He says that the papers were served but that he didn't know what they were. He claims that he thought his landlord had just brought him another bill for the back rent. Since he didn't have the money to pay the rent, Mr. Mahon didn't open

the envelope. So he didn't know the envelope contained a summons, and he didn't appear in court. Now Mr. Mahon wants a chance to tell his side of the story, which is that he didn't pay all of the rent because he spent $65 to repair a broken window that Mr. Hobbs wouldn't fix.

Mr. Hobbs says Mr. Mahon was properly served. He therefore shouldn't have another chance in court, the landlord claims, and he should pay the $250 he owes in back rent.